



# ARIZONA DEPARTMENT OF TRANSPORTATION POLICIES AND PROCEDURES

## PER-9.02 NONDISCRIMINATION

Effective: June 3, 2002

Supersedes: PER 9.02 Sexual Harassment (3-1-98)

Responsible Office: ADOT Civil Rights, (602) 712-7761

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### 2.01 PURPOSE

To define the Arizona Department of Transportation policy regarding discrimination, retaliation and harassment, to present examples of policy violations, and to explain the procedures for resolving complaints of discrimination, retaliation, or harassment.

### 2.02 SCOPE

The following policy is applicable to all employees of the Arizona Department of Transportation.

### 2.03 AUTHORITY

Authority for this policy is provided by the Equal Pay Act of 1963, Title VII of the Civil Rights Act of 1964, as amended, the Age Discrimination of Employment Act of 1967 (ADEA), Americans with Disabilities Act of 1990, the Civil Rights Act of 1991, and by A.R.S. § 41-1461, § 41-1463, and § 41-1464.

### 2.04 BACKGROUND

Arizona Department of Transportation formed the ADOT Civil Rights Office to develop guidelines for compliance with the policy and to investigate complaints regarding violations.

### 2.05 NONDISCRIMINATION POLICY

The Arizona Department of Transportation is committed to a policy of nondiscrimination.

- a. We do not discriminate against any individual on the basis of race, color, sex, religion, national origin, age, pregnancy, and/or disability.
- b. We make personnel decisions on the basis of merit. Personnel decisions include hiring, promotions, discipline, transfer, recruitment, advertising, reduction in force, rates of pay or other forms of compensation, selection for training, job assignments, accessibility, working conditions, special duty details, and employee evaluations and appraisals.
- c. We actively support recruitment and career development programs to ensure a diverse workforce in all job categories and pay grades.
- d. We have incorporated reasonable accommodation practices to enable us to hire, promote, and retain individuals with disabilities. Reasonable accommodations are provided to qualified applicants or employees with disabilities, unless the accommodation imposes an undue hardship on the operation of the Department or imposes a direct threat to the health or safety of the individual or others in the workplace (See ADOT Policy and Procedures PER 2.01, Americans with Disabilities Policy.)

- e. We do not tolerate sexual, racial or religious harassment in the agency. Each employee has an affirmative duty to maintain a workplace free of harassment, retaliation and discrimination.
- f. We do not tolerate retaliation against those who make complaints of discrimination, retaliation, or harassment, who cooperate in the complaint and investigation process, or who oppose practices that violate this policy.
- g. Persons in violation of this policy will be subject to disciplinary action, up to and including dismissal from state service.
- h. Our policy is posted throughout ADOT.
- i. All written bid announcements, requests for proposals, employment announcements, requests for applications, program brochures, literature and general solicitations include the phrase:

**“AN EQUAL EMPLOYMENT OPPORTUNITY AGENCY”**

The Arizona Department of Transportation is committed to the principles of Equal Employment Opportunity. To ensure dissemination and implementation of the Equal Opportunity program throughout all levels of the department, the ADOT Civil Rights Deputy Administrator serves as the Equal Opportunity Administrator for the Arizona Department of Transportation.

## **2.06 POLICY VIOLATIONS**

Prohibited conduct includes, but is not limited to:

- a. Discriminating against any individual with respect to his compensation, terms, conditions, or privileges of employment because of the individual's race, color, national origin, religion, sex, age, pregnancy, or disability.
- b. Limiting, segregating, or classifying employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect the individual's status as an employee, because of the individual's race, color, national origin, religion, sex, age, pregnancy, or disability.
- c. Any conduct, communication, or visual display oriented toward race, color, national origin, religion, disability, pregnancy, age, or sex that creates an intimidating, hostile, or offensive working environment, or that otherwise interferes with an individual's work performance. Examples include racial or sexual epithets, offensive jokes, and graffiti disparaging persons based on race, color, national origin, religion, disability, pregnancy, age, or sex.
- d. Making sexual advances or requesting sexual favors, either implicitly or explicitly, a term or condition of employment.
- e. Retaliating against an individual who has opposed, reported or filed a complaint of discrimination based on race, color, national origin, religion, disability, pregnancy, age, or sex.
- f. Failure of a supervisor to investigate or report violations of this nondiscrimination policy.
- g. Knowingly filing a complaint without a good faith basis, or knowingly making false statements in connection with an investigation.

**2.07 DISSEMINATION OF POLICY**

A copy of this policy shall be given to each new and current employee.

**2.08 COMPLAINT PROCEDURES**

An employee alleging discrimination, retaliation, or harassment based upon race, color, national origin, religion, disability, pregnancy, age, or sex shall report the discrimination/harassment/retaliation to the ADOT Civil Rights Office. The complainant must believe discrimination, harassment, or retaliation has occurred and that it is because of an individual's race, color, sex (including equal pay), religion, national origin, age (40 and over), disability, or in retaliation for having participated in activity protected by the various civil rights statutes or opposing violations of those statutes. The complaint may include more than one basis.

Any supervisor made aware of allegations of discrimination should promptly report it to the ADOT Civil Rights Office using the EMPLOYEE DISCRIMINATION INCIDENT REPORT FORM (Exhibit 1). The ADOT Civil Rights Office's telephone number is 602.712.7761 and fax number is 602.712.8429. The ADOT Civil Rights Office is part of the Arizona Department of Transportation. It is not the same as the U.S. Equal Employment Opportunity Commission (EEOC) or the Arizona Office of the Attorney General, Civil Rights Division.

Employees are encouraged to discuss and attempt to resolve their complaints informally; however, an EMPLOYEE DISCRIMINATION INCIDENT REPORT FORM must be completed and sent to the ADOT Civil Rights Office. An EEO Counselor can assist in completing the report. Assistance will be provided in Spanish, if requested.

- a. **FILING COMPLAINTS.** In order to encourage employees to report policy violations, complaints may be filed in any one or all three of the following ways.

- (1) Employees may report violations of this policy by contacting the ADOT Civil Rights Office. This contact can be by telephone call, personal visit, e-mail, or in writing. Complaints must be initiated within 180 days from the date of the most recent discriminatory act or act of harassment or retaliation. The ADOT Civil Rights Office will ask the individual to complete a Nondiscrimination Complaint Incident Report Form (Exhibit 1).
- (2) Employees may file a grievance through the Employee Problem Solving Process (PER 9.01) indicating discrimination, retaliation, or harassment as a basis for the grievance. In such cases, the ADOT Civil Rights Office will report its findings, resolution, or dismissal to the responding authority at the appropriate step. A grievance must be filed within 10 working days of the action being grieved. Employees are strongly encouraged to read this policy because there are many steps and time frames involved. If help is needed to understand it, Human Resources staff can help. Filing a complaint with the ADOT Civil Rights Office will toll or suspend the time limit for filing a grievance if the complaint is dismissed by the ADOT Civil Rights Office for being outside the scope of this policy, as long as the complaint was made within 10 working days of the incident.
- (3) Employees may file a complaint with the U.S. Equal Employment Opportunity Commission (EEOC) or with the Arizona Office of the Attorney General, Civil Rights Division. The EEOC is part of the Federal government and is separate from the Arizona Department of Transportation (ADOT). A complaint to the EEOC must be filed within 300 days of the most recent incident. A complaint with the Arizona Office of the Attorney General, Civil Rights Division, must be filed within 180 days of the most recent incident. Filing a complaint with the ADOT Civil Rights Office or filing a grievance under the ADOT grievance procedure does not extend these time limits.

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**b. CONFLICT**

If either the employee or the ADOT Civil Rights Office believes that the Civil Rights Office has a conflict of interest, the Director will review the situation to determine whether a conflict exists. If the Director finds a conflict, the Director shall appoint another qualified investigator from within or outside the Department.

**c. COMPLAINT PROCESS**

The ADOT Civil Rights Office will attempt to maintain the confidentiality of the complainant and witnesses to the maximum extent possible. However, during an investigation this may not be possible, and the investigator will advise the complainant and witnesses if confidentiality cannot be maintained.

Once an Incident Report Form is completed, an investigator will review it and provide a copy to the complainant. Investigations must be finished within **60 days** from the date the Incident Report Form is received by the ADOT Civil Rights Office, unless the ADOT Civil Rights Office and the complainant agree to extend the deadline an additional 45 days, for a total of 105 days. Any of the deadlines in this section may be extended by mutual agreement of ADOT and the complainant.

The Director will be immediately advised of any facts or circumstances that, in the good faith belief of the investigator, may warrant immediate remedial action in order to safeguard the complainant, respondent, employees, or other person.

When contacting supervisors or witnesses as part of an investigation or informal resolution (described below), the investigator shall inform each person that retaliation against the complaining employee, and/or retaliation against witnesses is strictly prohibited and that any violations should be reported immediately.

Complaints are addressed by the ADOT Civil Rights Office in one of three ways.

- (1) Dismissal. The ADOT Civil Rights Office may dismiss a complaint; however, complaints may be dismissed only for the following reasons:
  - (a) The report was not made within 180 days of the most recent discriminatory act.
  - (b) Accepting all the factual allegations as true, the complaint does not include information from which a determination can be made that the incident was because of someone's race, color, sex, religion, national origin, age, disability, or retaliation.
  - (c) Very rarely, a complaint may be dismissed because the process is being abused. Examples include multiple complaints on the same issues or lack of specificity in the allegations which after limited inquiry and review have not been made more specific.

The ADOT Civil Rights Office will provide the complainant with the reason for the dismissal in writing. A complainant may appeal the dismissal to the Director. The appeal process is described in paragraph D of this section. If the time frame for filing a grievance had not expired before the Incident Report Form was submitted to the ADOT Civil Rights Office, the complainant shall be advised of his or her right to pursue a grievance under ADOT Policies and Procedures PER 9.01, Employee

Problem Solving Procedure if the dismissal is for reasons outside this policy. The complainant has 10 working days from receipt of the dismissal to initiate a grievance.

- (2) Informal Resolution. ADOT strives to resolve problems at the lowest possible level. The ADOT Civil Rights Office staff may attempt to informally resolve complaints filed using the Incident Report Form or grievance filed using the Employee Problem Solving process.

Staff will review the complaint and may make a limited inquiry into the incident. The purpose of this is to obtain information regarding the complaint and to determine if it will be possible to resolve it informally. In cases where it is possible to resolve the complaint without a formal investigation, the resolution will be documented and the complainant will be advised of the resolution in writing. If the complainant agrees with the resolution, the complainant will sign a form provided by the ADOT Civil Rights Office. The resolution will be attached to the Incident Report Form and retained.

If resolving the complaint informally is not possible, a formal investigation will take place. A description of the steps of a formal investigation follows this section.

If after the limited inquiry, the investigator determines there is no cause to believe a policy violation has occurred, the complainant will be notified in writing. For complaints filed with the ADOT Civil Rights Office, complainants may file an appeal with the Director in accordance with paragraph D below.

In all situations, the complainant may also file a charge with the US Equal Employment Opportunity Commission (EEOC) or the Arizona Office of the Attorney General, Civil Rights Division.

- (3) Formal Investigations. The ADOT Civil Rights Office is responsible for conducting formal investigations of complaints. Due to conflicts of interest or staffing issues, it may be necessary for the ADOT Civil Rights Office to use investigators outside the ADOT Civil Rights Office or outside the Department. In all cases, the ADOT Civil Rights Office remains responsible for the content and timeliness of the investigation.

The investigative process is non-adversarial. That means that the investigator must collect evidence regardless of the parties' positions with respect to the evidence. The purpose of the investigation is to collect facts to determine if there has been a policy violation. If the complainant would like to add to or eliminate claims during the process, including retaliation, a simple written statement by the complainant, either on the Incident Report Form or as a separate memo or e-mail, will be sufficient.

When a formal investigation is conducted, the investigator will review the Incident Report Form and interview the complainant.

Subsequent investigation may include additional interviews or fact-finding conferences, requests for information, and a review of the

relevant documents. The investigation should be designed to thoroughly explore all sides of the issue or complaint.

All persons interviewed shall be advised of their right to remain free of retaliation for participating in the process and shall be reminded that ADOT does not tolerate retaliation or harassment against other individuals involved in the investigation.

The investigator shall take notes of all interviews containing the date, time, location, and persons present. Notes should address each witness' knowledge regarding the allegations, the sources of that knowledge, and other who, what, when, where, and why information. If the investigator is unable to interview a witness, the notes shall reflect the attempt to contact the witness and reason why the witness could not be interviewed. The investigator shall copy and review all relevant documents.

At the conclusion of the formal investigation, the ADOT Civil Rights Office shall report its findings to the Director, as detailed in section 2.08.

d. APPEALS TO THE DIRECTOR

In all cases, if a complainant is not satisfied with the results of the findings of the Civil Rights Office, an appeal can be filed in writing with the Director. Appeals must be filed within 10 working days of receipt of the dismissal, resolution or findings. The Director has 10 working days to respond to the appeal in writing.

## **2.09 REPORTS AND DIRECTOR ACTION**

- a. The ADOT Civil Rights Office will report its findings in all formal investigations to the Director within 45 days of the complaint being filed. (The investigation period can be extended to 105 days with the consent of the complainant.)
- b. Upon completion of a formal investigation, the investigator will forward a report to the Director. Within 15 working days, the Director will review the report and appeal, if applicable, and will take timely corrective action, if warranted. Corrective action can include disciplinary action against individuals found to have violated the policy, and action in favor of individuals found to be victims of policy violations. A copy of whether final action was or was not taken will be forwarded to the ADOT Civil Rights Office to be included in the file, and a written summary of the investigation and whether action was taken by the Director will be given to the complainant.
- c. If the complainant disagrees with the Director's action, the complainant may submit a written request for reconsideration to the Director. The request must be submitted within 10 working days, and the Director shall respond within 10 working days.
- d. The final formal investigative file, maintained by the ADOT Civil Rights Office, should contain the following:
  - Incident Report Form or Grievance
  - the intake form, as completed by the investigator
  - if the complaint was amended, a copy of the amendment
  - interview notes
  - copies of the documents reviewed
  - a copy of the report to the Director

- in the case of cause findings, a copy of the action taken to resolve the complaint (including any appeals to the Director)
  - a copy of the summary to the complainant
- e. Employees who are not satisfied with ADOT's action may file a complaint with the US Equal Employment Opportunity Commission and the Arizona Office of the Attorney General, Civil Rights Division. A complaint to the EEOC must be filed within 300 days of the most recent incident. A complaint to the Arizona Office of the Attorney General, Civil Rights Division must be filed within 180 days of the most recent incident.

## 2.10 RECORDKEEPING

- a. The ADOT Civil Rights Office will retain all records of complaints and investigation reports (including dismissals and informal resolutions) for at least three years after the investigation and recommendation are final. The written materials shall be sufficient to permit an effective after-the-fact review, including the names of the parties and witnesses, the investigator's notes of all interviews, and reasons for the decision and recommended actions, if any.
- b. This policy and related procedures will be reviewed annually by the ADOT Civil Rights Office to determine their effectiveness in maintaining a discrimination-free work place. The policy and procedures will be revised and updated as necessary when changes in circumstance or law occur.
- c. Complete statistics shall be kept by the ADOT Civil Rights Office regarding complaints and investigations, including the type and number of complaints and resolutions each month and the location and unit involved.

## 2.11 DEFINITIONS

ADOT Civil Rights Office	Means the office within the Arizona Department of Transportation (ADOT) charged with investigating and resolving complaints of discrimination, harassment, and retaliation
Complainant	Means any person filing a complaint alleging a violation of this policy
Director	Means the Director of the Arizona Department of Transportation
Discrimination	Means treating an employee differently because of their gender, race, national origin, religion, disability, pregnancy, age, and/or color in a manner that negatively affects their terms and conditions of employment.
EEOC	Means the Equal Employment Opportunity Commission, a part of the United States Department of Justice charged with investigation allegations of discrimination, harassment or retaliation related to employment
Employee	Means all covered, uncovered, contract, part time and clerical pools workers.

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**Office of the Attorney General, Civil Rights Division**

Means the office within the Arizona Department of Law charged with investigating and resolving complaints of discrimination, harassment, and retaliation

**Respondent**

Means the individual accused of the discriminatory action, harassment or retaliation

**Retaliation**

Means taking an adverse employment action against an employee because that employee has made a complaint or participated in an investigation regarding an allegation of a violation of this policy or because the employee has opposed practices prohibited by this policy.

**2.12 CORRESPONDING POLICIES**

ADOT Policy and Procedures PER-1.02, Recruitment and Selection Policy

ADOT Policy and Procedures PER-6.05, Employee Performance and Evaluation Process

ADOT Policy and Procedures PER-9.01, Employee Problem Solving Procedure

ADOT Policy and Procedures PER-2.01, Americans with Disabilities Policy

ADOT Policy and Procedures PER-11.02, EEO Counselor Program

ADOT Policy and Procedures PER-5.05, Guidelines for Progressive Discipline Policy



<b>Arizona Department of Transportation</b> <b>Confidential</b> <b>Employee Discrimination</b> <b>Incident Report Form</b>				
Name		Job Title		Work Telephone
Org Code	Position Number	Supervisor's Name/Telephone Number		
If Applicable, Name of Representative		Title	Organization	
<p style="text-align: center;">Complaint of alleged discrimination based on: Check appropriate box(es)</p> <div style="display: flex; flex-wrap: wrap;"> <div style="width: 50%;"><input type="checkbox"/> Race</div> <div style="width: 50%;"><input type="checkbox"/> Color</div> <div style="width: 50%;"><input type="checkbox"/> Religion</div> <div style="width: 50%;"><input type="checkbox"/> Sex</div> <div style="width: 50%;"><input type="checkbox"/> National Origin</div> <div style="width: 50%;"><input type="checkbox"/> Age</div> <div style="width: 50%;"><input type="checkbox"/> Equal Pay</div> <div style="width: 50%;"><input type="checkbox"/> Pregnancy</div> <div style="width: 50%;"><input type="checkbox"/> Disability</div> <div style="width: 50%;"><input type="checkbox"/> Retaliation</div> <div style="width: 100%;"><input type="checkbox"/> Other (Specify) _____</div> </div>				
<p><i>Explain the problem in detail. Include all important information documentation, such as dates, places, etc. Use attachments to explain the problem, if necessary. DO NOT use the reverse side of this form.</i></p>				
<p><i>What do you suggest be done to correct this problem?</i></p>				
<p><b>Employee's Signature:</b> _____ <b>Date:</b> _____</p>				